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ATTORNEYS FOR PLAINTIFF

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

STEWART RESMER, an individual, on)	
behalf of himself and all others similarly)	Case No. CV 09-08497 MMM (VBKx)
situated,)	
)	PLAINTIFF'S RESPONSE TO
Plaintiff,)	ORDER TO SHOW CAUSE WHY
)	ACTION SHOULD NOT BE
v.)	DISMISSED FOR LACK OF
)	SUBJECT MATTER
OVERSEE.NET, INC., a California)	JURISDICTION
corporation, and SNAPNAMES.COM,)	
INC., an Oregon Corporation,)	Judge Margaret M. Morrow
)	
Defendants.)	Action Filed: Nov. 18, 2009
)	

1 **a. Introduction**

2 On January 26, 2010, the Court entered its Order to Show Cause Why the
3 Instant Action Should not be Dismissed for Lack of Subject Matter Jurisdiction (the
4 “Order”). (Dkt. 17.) In its Order, the Court requested that Plaintiff provide an
5 explanation as to why jurisdiction is appropriate under the Class Action Fairness Act
6 of 2005, Pub. L. No. 109-2, 119 Stat. 4 (codified in relevant part at 28 U.S.C. §
7 1332(d)) (“CAFA”). For the following reasons, Plaintiff had a good faith basis for
8 pleading the requisites for maintaining CAFA jurisdiction, including that more than
9 \$5 million is in controversy.

10 **b. More than \$5 million is in controversy**

11 Plaintiff has expressly alleged that more than \$5 million is at issue in this
12 action. (Compl. ¶¶ 8-9.) Plaintiff bases those allegations not only upon the fact that
13 he personally suffered \$20 in damages as a result of Defendants’ conduct, but also
14 upon his understanding of the damages suffered by other putative class members.

15 While the analysis the Court used in its Order is sound, the injuries Plaintiff
16 suffered as a result of Defendants’ conduct were by no means the maximum incurred
17 by class members on a per auction basis. Indeed, throughout their investigation of
18 this matter Plaintiff’s counsel have spoken with numerous putative class members
19 who purchased domain names at prices that were inflated by several hundreds of
20 dollars on a per auction basis. (Declaration of Benjamin H. Richman ¶ 3, a true and
21 accurate copy of which is attached hereto as Exhibit A.) By way of example, in one
22 instance a putative class member received confirmation from Defendants that he
23 overpaid more than \$200 for a single domain name as a result of the alleged shill
24 bidding. (Richman Decl. ¶ 4.) Plaintiff’s counsel have not spoken with any potential
25 class member who overpaid less than \$20. (Richman Decl.

¶ 5.) Therefore, using the median of this range (i.e. \$110) there would be at least \$5.5 million dollars at issue in this case.¹

Based on his investigation, Plaintiff had more than a good faith basis to believe that the amount in controversy exceeded \$5 million when he filed his Complaint. *See In re Online DVD Rental Antitrust Litig.*, No. M 09-2029 PJH, 2009 WL 1955796, at *1 (N.D. Cal. July 6, 2009) (“under CAFA, the individual damages alleged per plaintiff is irrelevant for purposes of determining the amount in controversy...the issue is whether the class members' claims *in the aggregate* equal or exceed \$5,000,000”) (emphasis in original).

Thus, the Court may properly exercise jurisdiction over this matter pursuant to CAFA.

c. Conclusion

For the foregoing reasons, Plaintiff Stewart Resmer respectfully requests that the Court (1) finds that he has satisfied the requisites for CAFA jurisdiction, and (2) exercises its jurisdiction over this matter pursuant to CAFA.

Dated: February 8, 2010

EDELSON MCGUIRE, LLC

By: /s/ Benjamin H. Richman
BENJMAIN H. RICHMAN
One of the Attorneys for Plaintiff

¹ It should be noted that these calculations are based upon the damages suffered by members of the “Direct Effect Sub-class” only. The “Global Effect Class” that Plaintiff seeks to represent is certainly broader, but further analysis is not necessary at this time given that the damages suffered by class members on a per auction basis clearly exceed CAFA’s threshold.

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CERTIFICATE OF SERVICE

I, Benjamin H. Richman, an attorney, certify that on February 8, 2010, I served the above and foregoing ***Plaintiff's Response to Order to Show Cause Why Action Should not be Dismissed for Lack of Subject Matter Jurisdiction***, by causing true and accurate copies of such paper to be filed and transmitted to the persons shown below via the Court's CM/ECF electronic filing system, on this the 8th day of February, 2010.

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/s/ Benjamin H. Richman